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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,332

02/18/2004

Gregory G. Griese

117P45USI4

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23322 7590 04/12/2007  
IPLM GROUP, P.A.  
POST OFFICE BOX 18455  
MINNEAPOLIS, MN 55418

EXAMINER

DOERRLER, WILLIAM CHARLES

ART UNIT

PAPER NUMBER

3744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/781,332

Applicant(s)

GRIESE ET AL

Examiner

William C. Doerrler

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> .                                  | 6) <input type="checkbox"/> Other: ____.                          |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :2-14-2006, 12-7-2004, 1-10-2005 ,2-18-2004.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 claims that the solid product is injection molded. This contradicts claim 10, from which it depends, which claims that the solid product is extruded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Davis (3,844,478).

Davis shows a dispenser for a solid material which adhesively attaches to a surface.

The phrases “for dispensing a fabric conditioner in a dryer” and “to an inner surface of the dryer” are considered functional language. The device of Davis is capable of performing these steps, so the limitations are seen as being met.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-12 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis.

Davis discloses applicants' basic inventive concept, a dispenser for a solid which is adhesively attached to a surface, substantially as claimed with the exception of specifying that the solid is extruded or injection molded. Official Notice is taken that extrusion and injection molding are well known methods of forming solids and as such would have been obvious to one of ordinary skill in the art to economically provide a shaped solid. It is further noted that the claims are apparatus claims so the extrusion and injection molding limitations are product by process limitations. The extrusion or

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injection molding of the solid do not change the properties of the solid, and thus do not change the properties of the apparatus being claimed.

Claims 10-12 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrickson et al.

Hendrickson et al discloses applicants' basic inventive concept, a dispenser for a solid which is removably attached to a surface, substantially as claimed with the exception of using adhesive to attach the device. Official Notice is taken that adhesive is a well known removable attachment means. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to modify the device of Hendrickson by using adhesive to removably attach the device to a surface, including not magnetic materials. In regard to the solid being extruded or injection molded, Official Notice is taken that extrusion and injection molding are well known methods of forming solids and as such would have been obvious to one of ordinary skill in the art to economically provide a shaped solid. It is further noted that the claims are apparatus claims so the extrusion and injection molding limitations are product by process limitations. The extrusion or injection molding of the solid do not change the properties of the solid, and thus do not change the properties of the apparatus being claimed.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Hendrickson et al or Davis in view of Mizuno (4,105,813).

Davis and Hendrickson et al each disclose applicants' basic inventive concept, a removable solid dispenser, substantially as claimed with the exception of using an attachment plate between the solid carrier and the surface it is attached to. Mizuno

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shows this feature to be old in the solid dispenser art. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention from the teaching of Mizuno to modify the solid dispenser of either Davis or Hendrickson et al by adding an attachment plate for fast and easy changes of the solid material being dispensed.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,799,740.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims will either dominate the earlier patented claims, or differ only in obvious ways. Claims 1-4,7 and 9 of the current case are broader in scope than the patented claims and would dominate the earlier claims if allowed without a terminal disclaimer. Claims 4 and 5 of the patent claim a device for dispensing a solid

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with the solid being held to a plate using tapered (cl.5) holes which are countersunk (cl.

4). Claims 5,6 and 8-23 are obvious modifications of the previously patented claims.

Extrusion and injection molding are seen as product by process limitations that will not appreciably effect the structure of the solid in the dispenser, and thus not appreciably effect the claimed device. Nevertheless, Official Notice is taken that extrusion and injection molding are well known methods of forming solids and that adhesive is a well known removable fastening means. It would have been obvious at the time of applicants' earlier patent to modify the claims by specifying extrusion or injection molding to produce elongated solids economically, and to use adhesive to provide a strong connection between the solid and the surface that it is attached to.

Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,908,041.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims will either dominate the earlier patented claims, or differ only in obvious ways. Claims 1-4,7 and 9 of the current case are broader in scope than the patented claims and would dominate the earlier claims if allowed without a terminal disclaimer. Claims 4 and 5 of the patent claim a device for dispensing a solid with the solid being held to a plate using tapered (cl.6-8) holes which are countersunk (cl. 5). Claims 5,6 and 8-23 are obvious modifications of the previously patented claims. Extrusion and injection molding are seen as product by process limitations that will not appreciably effect the structure of the solid in the dispenser, and thus not appreciably effect the claimed device. Nevertheless, Official Notice is taken that extrusion and



injection molding are well known methods of forming solids and that adhesive is a well known removable fastening means. It would have been obvious at the time of applicants' earlier patent to modify the claims by specifying extrusion or injection molding to produce elongated solids economically, and to use adhesive to provide a strong connection between the solid and the surface that it is attached to.

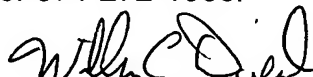
Claims 11-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 7,093,771. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims will either dominate the earlier patented claims, or differ only in obvious ways. Claims 10-23 are obvious modifications of the previously patented claims. Extrusion and injection molding are seen as product by process limitations that will not appreciably effect the structure of the solid in the dispenser, and thus not appreciably effect the claimed device. Nevertheless, Official Notice is taken that extrusion and injection molding are well known methods of forming solids and that adhesive is a well known removable fastening means. It would have been obvious at the time of applicants' earlier patent to modify the claims by specifying extrusion or injection molding to produce elongated solids economically, and to use adhesive to provide a strong connection between the solid and the surface that it is attached to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
William C Doerrler  
Primary Examiner  
Art Unit 3744

WCD